

Corrupt Practices Act of 1977 (“FCPA”); in Count Two, theft concerning programs receiving Federal funds in violation of the Federal Program Fraud statute, 18 U.S.C. § 666(a)(1)(A); and, in Count Three, the bribery of a foreign government official in violation of the FCPA, 15 U.S.C. § 78dd-2(a)(3). Defendant PITCHFORD admits that he is guilty of these offenses and agrees to so advise the Court. Subject to the conditions set forth herein, the Fraud Section and the United States Attorney for the District of Columbia agree to not charge the defendant with any other crimes that arose out of the facts set forth in the Statement of Facts filed herewith or from any information now known to the Fraud Section and the United States Attorney for the District of Columbia, subject to Section VIII, below.

II. PENALTY

3. Defendant PITCHFORD understands and agrees that the statutory maximum sentence for the counts to which he is pleading guilty is a term of imprisonment up to five years for each count, followed by a term of supervised release of three years; a maximum fine of \$250,000 or twice the gross benefit, and a special assessment of \$100.00 for each felony count, pursuant to 18 U.S.C. § 3013(a)(2)(A).

4. The defendant understands that the length of a prison term, if any, and the amount of a fine and restitution, if any, are matters within the sound discretion of the sentencing judge. The defendant understands that his sentence will be decided by the Court and that neither the government nor his attorney can predict what his sentence will be.

III. RESTITUTION

5. Pursuant to 18 U.S.C. § 3663 (a)(3), the defendant and the government agree that the amount of loss in this case is \$400,000 and the defendant agrees to pay full restitution of this

amount for damages that resulted from his violations of the statutes listed in Section I herein.

IV. FORFEITURE

6. Defendant waives any interest in and shall not contest the administrative forfeiture of the following property, pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 981(a)(1)(A), and agrees that such property constitutes or is derived from proceeds traceable to: program fraud, in violation of 18 U.S.C. § 666; and property involved in or traceable to property involved in money laundering, in violation of 18 U.S.C. §§ 1956 or 1957:

- a) \$76,953.62 in funds seized, on April 10, 2002, from Intercontinental Asset Management account #HBA-953881-18 in the name SAWS Holding C.V., with Wexford Clearing Services Corporation, 1 New York Plaza, New York, NY 10292;
- b) \$65,844.33 in funds seized, on April 10, 2002, from Intercontinental Asset Management account #HBA-953890-18 in the name SAWS Holding C.V. #2, with Wexford Clearing Services Corporation, 1 New York Plaza, New York, NY 10292; and
- c) one 1984 Morgan Yacht named Stradivarius, bearing Hull Number MRY48008M84H, Official Number D683463, seized on April 17, 2002, in which defendant PITCHFORD disclaims ever having any interest.

Defendant acknowledges and agrees that the Government reserves its right to bring any civil actions, if necessary, in any jurisdiction for the forfeiture of any of his assets, real or personal, that are subject to forfeiture pursuant to any federal statute.

V. COOPERATION

A. Defendant's Obligations

7. Defendant PITCHFORD agrees to disclose completely and truthfully all information regarding his activities and those of others in all matters about which he has

knowledge or hereafter acquires knowledge and concerning any matter about which the United States and/or the government of the United Kingdom of Great Britain may inquire. Defendant agrees to accompany agents of the United States or agents of the United Kingdom to any location in order to accomplish that purpose. Further, defendant agrees to appear and testify truthfully before the Grand Jury or at any trial or other court proceeding upon request of the United States or the United Kingdom. Defendant agrees to answer all questions completely and truthfully and must not withhold any information. Defendant also agrees to produce any and all documents relating his employment with the Central Asian American Enterprise Fund (“CAAEF”) and his plea of guilty to the United States or the United Kingdom upon request.

8. Defendant agrees not to attempt to protect any person or entity through false information or omission or to falsely implicate any person or entity. Defendant must not commit any crimes whatsoever. Defendant agrees to furnish to the United States any documents in defendant's custody or possession or under defendant's control that are relevant to the investigation. Defendant's obligation to cooperate commences with defendant's signing of this plea agreement.

B. The Government's Obligations

9. In exchange for the defendant's plea of guilty and agreement to cooperate as set forth above, the Fraud Section and the United States Attorney for the District of Columbia agree to each of the following:

- a. This plea agreement binds only the Fraud Section, Department of Justice, the United States Attorney for the District of Columbia, and the defendant; it does not bind any other government agency, United States Attorney, or United States

Attorney's Office.

- b. If the Court accepts defendant PITCHFORD's plea of guilty to the Information and defendant PITCHFORD fulfills each of the terms and conditions of this agreement, the Fraud Section agrees that it will not further prosecute defendant PITCHFORD for offenses relating to his employment at the CAAEF that are now known to the Fraud Section. This agreement to forego further prosecution does not apply to any charges that may be brought by the Internal Revenue Service, U.S. Department of Treasury, or the Tax Division of the United States Department of Justice under Title 26, United States Code. Further, the agreement does not limit in any way the right or ability of the United States to investigate or to prosecute crimes based on facts which are not part of the agreed facts as set forth in the Statement of Facts.
- c. Defendant PITCHFORD has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant PITCHFORD continues to accept responsibility for his actions, the Fraud Section will recommend that he receive the maximum applicable reduction for acceptance of responsibility under § 3E1.1 of the Sentencing Guidelines.
- d. The government agrees that it will not seek an upward departure from the applicable Sentencing Guidelines.
- e. The government agrees that the Sentencing Guidelines for 1998 should be used to calculate defendant PITCHFORD's sentence in this matter.

10. If defendant PITCHFORD fully complies with all the terms and conditions of this agreement, his cooperation or lack thereof will be evaluated by the Departure Guideline Committees of the Fraud Section, U.S. Department of Justice and the United States Attorney's Office for the District of Columbia. If, after evaluating the full nature and extent of defendant PICHFORD's cooperation, the Departure Guideline Committees determine by consensus that he has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, then the Fraud Section may file a departure motion pursuant to 18 U.S.C. § 3553(e) and Section 5K1.1 of the Sentencing Guidelines. Defendant PITCHFORD understands that this determination is in the sole discretion of the Departure Guideline Committees and that nothing in this agreement may be construed to require the Department of Justice to file such a motion. The United States reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the court at the time of sentencing; however the government's recommendation will not be based upon the outcome of any trial in this matter. The defendant and his attorney are free to make a recommendation to the court concerning an appropriate sentence at time of sentencing. The defendant understands, however, that the ultimate sentence to be imposed in this matter rests exclusively within the discretion of the court.

VI. ELEMENTS OF THE OFFENSE

Conspiracy

11. Title 18 U.S.C. Section 371 reads in pertinent part:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the

conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

12. In order for the defendant to be found guilty of this charge, the Government must prove each of the following elements beyond a reasonable doubt:

First: That two or more persons agreed to promote or facilitate the commission of a crime against the United States, *to wit:* theft from a federal program or bribery of a foreign government official in violation the FCPA;

Second: The defendant, knowing the purpose of the agreement, willfully joined in the agreement; and

Third: That one of the participants to this agreement committed one or more overt acts in furtherance of the criminal purpose of the agreement.

Theft From a Program Receiving Federal Funds

13. Title 18 U.S.C. Section 666(a)(1)(A) reads in pertinent part:

Whoever . . . being an agent of an organization [which receives, in any one year period, benefits in excess of \$10,000 under a Federal program] . . . (A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that is valued at \$5,000 or more, and is owned by, or is under the care, custody or control of such organization . . .in connection with any business, transaction, or series of transactions of such organization...shall be fined under this title, imprisoned not more than 10 years or both . . .

14. In order for the defendant to be found guilty of this charge, the Government must prove each of the following elements beyond a reasonable doubt:

First: That the defendant was an agent of an organization;

Second: That the defendant knowingly did embezzle, steal, obtain by fraud, or otherwise convert or misapply property valued at \$5,000 or more from the organization;

Third: That the organization received benefits in excess of \$10,000 in any one year period; and

Fourth: That the benefits were received from a Federal Program.

Bribery In Violation of the Foreign Corrupt Practices Act

15. Title 15 U.S.C. Section 78dd-2(a) reads in pertinent part:

It shall be unlawful for any domestic concern¹ . . . , or for any officer, director, employee, or agent of such domestic concern . . . , to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of--

(A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

16. In order for the defendant to be found guilty of this charge, the Government must prove each of the following elements beyond a reasonable doubt:

First: That the defendant is a “domestic concern” or an officer, director, or agent of a

¹ Section 78dd-2(h)(1)(A) of Title 15 defines “domestic concern” to include “any individual who is a citizen, national, or resident of the United States.”

“domestic concern”;

Second: That he used the mails or any means or instrumentality of interstate commerce or did any other act in furtherance of an unlawful act under the statute;

Third: That he offered, paid, promised to pay, or authorized the offer, promise or payment of any money or anything of value;

Fourth: That he acted corruptly;

Fifth: That he knew that all or a portion of the payment would be offered, given, or promised, directly or indirectly, to a foreign official;

Sixth: That the payment was for one of the following purposes:

– to influence any act or decision of the foreign official in his official capacity;

– to induce the foreign official to do or omit to do any act in violation of that official’s lawful duty; or

– to induce such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality; and

Seventh: That the payment was made in order to assist the defendant in obtaining or retaining business for, or with, or directing business to, any person.

VII. SENTENCING FACTORS

17. Defendant PITCHFORD understands that a sentencing guideline range for this case will be determined by the Court pursuant to the Sentencing Reform Act, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998. He further understands that the Court will impose a sentence within that range unless the Court finds that there is a basis for departure because

aggravating or mitigating circumstances exist which were not adequately taken into consideration when the guidelines were formulated and which should result in a sentence different from the guideline range.

18. The defendant understands that there is no agreement as to his criminal history or criminal history category and that his criminal history could alter his offense level if he is a career offender or if the instant offense was part of a pattern of criminal conduct from which he derived a substantial portion of his income.

19. In determining the factual basis for the sentence, the Court will consider this agreement, together with the results of the presentence investigation and any other relevant information, subject to the limitations in Sentencing Guideline §1B1.8(a). The defendant understands that the Court is not bound to follow the recommendations of the United States. If the Court declines to sentence the defendant as recommended by the United States, the defendant cannot, for that reason alone, withdraw his guilty plea.

20. The defendant understands that neither the United States, his lawyer, nor the Court can make a binding prediction of, or promise him, the guideline range or sentence that ultimately will apply to his case. The defendant agrees that no one has made such a binding prediction or promise.

21. The United States will not object to the defendant remaining on bond pending sentencing.

VII. TAXES

22. The defendant also agrees to file, within 90 days, true and correct federal tax returns, if necessary, for any taxable year affected by the offenses alleged in the indictment and to

pay for all taxes, interest, and penalties for those years within a reasonable time to be agreed upon with the Internal Revenue Service.

23. The defendant also agrees to make all books, records, and documents available to the Internal Revenue Service for use in computing defendant's taxes, interest, and penalties for any taxable year.

VIII. BREACH OF AGREEMENT

24. If the defendant has failed or should fail in any way to fulfill completely any of his obligations under this agreement, then the United States will be released from its commitment to honor all of its obligations to him. Specifically, the United States will be free to:

- A. Charge him with any offense including all crimes in connection with his employment with the CAAEF that he has committed, including crimes described in the Statement of Facts, hereto;
- B. Use against him in all of those prosecutions the information or documents that he himself has disclosed during the course of his cooperation including all statements given under the proffer agreement or any other statement defendant may make in discussions which are covered under 11(e)(6) of the Federal Rules of Criminal Procedure. Defendant agrees to expressly waive objection to the use of any such statements, testimony, or information to which defendant may otherwise be entitled to object in any federal prosecution, now or at any time in the future; and
- C. Recommend to the Court any sentence up to and including the maximum possible sentence.

25. Since defendant's acceptance of this agreement terminates all plea discussions with the United States, any statements made by defendant after the date of defendant's acceptance of this agreement are not governed by Rule 11(e)(6) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence.

IX. PROOF OF BREACH OF AGREEMENT

26. Whether or not the defendant has violated the terms of this agreement shall be determined by the Court at a hearing. At any hearing on the issue of breach, the defendant's disclosures and documents will be admissible and the United States will be required to establish the breach by a preponderance of the evidence.

X. NO IMMUNITY FOR PERJURY, OBSTRUCTION OR FALSE STATEMENTS

27. Nothing in this agreement shall be construed to protect the defendant from prosecution for Perjury, or Making False Declarations or False Statements, in violation of 18 U.S.C. §§ 1621, 1623, or 1001; Obstruction of Justice, in violation of 18 U.S.C. §§ 1503, 1505, 1510, or 1512; or any other offense committed after the date of this agreement. The information and documents that he discloses to the United States pursuant to this agreement may be used against him in any such prosecution.

28. During his plea, the Court may ask defendant to answer questions about the offense to which he pleads and the facts contained in any stipulation which he has made with the United States. If he answers those questions untruthfully, his answers may later be used against him in a prosecution for perjury or false statement.

XI. ACKNOWLEDGMENT

29. The undersigned defendant, RICHARD G. PITCHFORD, acknowledges by his signature below that he has read this Plea Agreement, that he understands the terms, conditions, and the factual basis as set forth herein, that he has discussed these matters with his attorney, and that the matters set forth in this Plea Agreement, including those facts which support his plea of guilty, are true and correct.

30. The undersigned defendant acknowledges and understands that he is presumed to be innocent of the charge filed against him and the government has the burden to prove his guilt beyond a reasonable doubt at a trial. Further, defendant acknowledges that he has been advised, and understands, that by entering pleas of guilty he is waiving, that is, giving up, certain rights guaranteed to him by law and by the Constitution of the United States. Specifically, he is giving up:

- A. The right to proceed to trial by jury on the original charges, or to a trial by a judge if he and the United States both agree;
- B. The right to confront the witnesses against him at such a trial and to cross-examine them;
- C. The right to remain silent at such trial, with such silence not to be used against him in any way;
- D. The right, should he so choose, to testify in his own behalf at such a trial;
- E. The right to compel witnesses to appear at such a trial, and to testify in his behalf; and
- F. The right to have the assistance of an attorney at all stages of such proceedings.

31. The undersigned defendant, his attorney, and the attorneys for the United States acknowledge that this Plea Agreement is the entire agreement negotiated by and agreed to by and between the parties and that no other promise has been made or implied by either the defendant, his attorney, or the attorneys for the United States.

32. Defendant PITCHFORD agrees that if the Court does not accept his plea of guilty to the Information, this agreement shall be null and void.

33. Defendant PITCHFORD agrees that the running of the statute of limitations for any offense as to which the statute of limitations has not yet expired on the date of this agreement

shall be tolled for a period of time beginning on the date of this agreement and continuing as long as this agreement remains in force, plus 60 days. This agreement may be amended only by a writing signed by all parties.

XII. HYDE AMENDMENT WAIVER

34. Defendant PITCHFORD agrees that the position of the Fraud Section in its decision to charge him, or to pursue any charge against him, is neither vexatious, frivolous, nor in bad faith. In accord with this agreement, defendant PITCHFORD waives all rights he has or may acquire under the "Hyde Amendment" to the Department of Justice's Appropriations Bill (H.R. 2267) for fiscal year 1998, including any implementing regulation or rule (collectively referred to herein as the "Hyde Amendment"), to recovery of attorney's fees and other litigation expenses related to any investigation or prosecution of the counts in the Information, and to any transactions or conduct related to, arising from, or associated with his employment at the CAAEF. Defendant PITCHFORD agrees that he will not file any motion, request, or other cause of action, nor will he request, authorize, or allow any other person to file or make any such motion, request, or other cause of action on his behalf for recovery of attorney's fees and other litigation expenses.

XIII. PROBATION OFFICE ACCESS TO RECORDS

35. Defendant PITCHFORD understands that nothing in this plea agreement will restrict access by the United States Probation Office or the Court to information and records in the possession of the Fraud Section, including that obtained from defendant PITCHFORD.

XIV. WAIVER OF APPEAL

36. Defendant PITCHFORD waives the right to appeal his conviction on any ground.

Defendant PITCHFORD also waives the right to appeal his sentence unless: (a) the Court increases defendant PITCHFORD's offense level pursuant to any Specific Offense Characteristic set forth in Chapter Two of the United States Sentencing Guidelines; (b) the Court departs upward from the applicable sentencing guideline range; (c) the Court imposes a sentence in excess of the applicable statutory maximum sentence; or (d) the Court imposes a more limiting condition of probation or supervised release under Section 3563(b)(6) or (b)(1) than the maximum established in the guidelines range.

Respectfully submitted,

APPROVED:


Roscoe C. Howard, Jr.
UNITED STATES ATTORNEY

DATE: 8/30/02

By: 


Peter B. Clark
Deputy Chief, Fraud Section
U.S. Department of Justice

DATE: 8/30/02

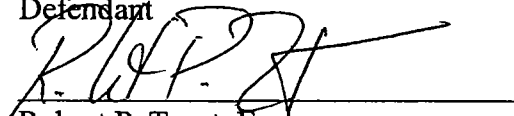

Joseph Walker
Trial Attorney, Fraud Section
U.S. Department of Justice

I have read this agreement and have carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. No other promises or inducements have been made to me other than those contained in this agreement. No one has threatened me or forced me in any way to enter into this agreement. I am fully satisfied with the representation of my attorney.

DATE: 08/30/02


RICHARD G. PITCHFORD
Defendant

DATE: 9/30/02


Robert P. Trout, Esq.
Counsel for Defendant